

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 GINA A.,

9 Plaintiff,

Case No. C18-5789 RBL

10 v.

ORDER AFFIRMING DENIAL OF
BENEFITS

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13 **I. INTRODUCTION**

14 This matter is before the Court on Plaintiff's Complaint (Dkt. 4) for review of the
15 Commissioner of Social Security's denial of her application for supplemental security income
16 ("SSI") benefits. This is the second time this matter has been before the Court. *See* Admin.
17 Record ("AR") (Dkt. 8) at 557-73.

18 Plaintiff has severe impairments of inflammatory arthropathy, degenerative disc disease,
19 obesity, affective disorder, anxiety disorder, attention deficit hyperactivity disorder ("ADHD"),
20 and posttraumatic stress disorder ("PTSD"). *Id.* at 535. Plaintiff applied for SSI benefits on
21 April 12, 2013, alleging disability as of that date.¹ *Id.* at 35-36, 169. Plaintiff's application was
22

23 ¹ Plaintiff initially alleged a disability onset date of November 7, 1994. *Id.* at 169. Plaintiff later
amended her alleged onset date to the date her application for benefits was filed. *Id.* at 35-36.

1 denied on initial review and on reconsideration. *Id.* at 83-93, 95-105.

2 At Plaintiff's request, Administrative Law Judge ("ALJ") Kimberly Boyce held a hearing
3 on Plaintiff's claims. *Id.* at 28-81. On April 9, 2015, ALJ Boyce issued a decision finding
4 Plaintiff not disabled and denying her claim for benefits. *Id.* at 10-22. The Appeals Council
5 denied review. *Id.* at 3-5. Plaintiff then sought review before this Court. *See id.* at 557-59.

6 On March 31, 2017, Magistrate Judge Karen L. Strombom issued a decision reversing
7 and remanding the ALJ's decision for further administrative proceedings. *Id.* at 560-73.
8 Magistrate Judge Strombom held that ALJ Boyce erred in evaluating the medical opinions of
9 examining doctors Monica Pilarc, Ph.D., and Gene McConnachie, Ph.D. *Id.* at 563-66. Plaintiff
10 also challenged the ALJ's evaluation of the medical opinions of John Haroian, Ph.D., but
11 Magistrate Judge Strombom did not address this issue. *See id.* at 561. Magistrate Judge
12 Strombom further held that ALJ Boyce erred in rejecting Plaintiff's subjective symptom
13 testimony. *Id.* at 566-72.

14 On remand, ALJ Boyce held a second hearing. *Id.* at 1143-89. ALJ Boyce issued her
15 second decision on July 25, 2018. *Id.* at 532-50. ALJ Boyce again found that Plaintiff was not
16 disabled and denied her claim for benefits. *Id.* The Appeals Council did not assume jurisdiction,
17 so the ALJ's decision became the Commissioner's final decision. *See* 20 C.F.R. § 416.1484(d).

18 Plaintiff argues that ALJ Boyce erred in evaluating (a) Plaintiff's subjective symptom
19 testimony and (b) the medical opinion evidence. Pl. Op. Br. (Dkt. 11) at 1. Plaintiff asks the
20 Court to remand this matter for further administrative proceedings. *Id.* at 18.

21 II. DISCUSSION

22 Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner's denial of
23 social security benefits if the ALJ's findings are based on legal error or not supported by

1 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
2 Cir. 2005). The ALJ is responsible for determining credibility, resolving conflicts in medical
3 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
4 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
5 neither reweigh the evidence nor substitute its judgment for that of the ALJ. *See Thomas v.*
6 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

7 **A. The ALJ Did Not Harmfully Err in Rejecting Plaintiff's Testimony**

8 Plaintiff contends the ALJ erred in rejecting her subjective symptom testimony. Pl. Op.
9 Br. at 16-18. Plaintiff focuses her argument on the ALJ's analysis of her testimony regarding her
10 mental symptoms, so the Court will do the same.

11 The Ninth Circuit has "established a two-step analysis for determining the extent to
12 which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871 F.3d 664,
13 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has presented objective
14 medical evidence of an impairment that "could reasonably be expected to produce the pain or
15 other symptoms alleged." *Id.* (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014-15 (9th Cir.
16 2014)). At this stage, the claimant need only show that the impairment could have caused some
17 degree of the symptoms; she does not have to show that the impairment could be expected to
18 cause the severity of the symptoms alleged. *Id.* The ALJ found that Plaintiff met this step
19 because her medically determinable impairments could have caused the symptoms she alleged.
20 AR at 537.

21 If the claimant satisfies the first step, and there is no evidence of malingering, the ALJ
22 may only reject the claimant's testimony "by offering specific, clear and convincing reasons for
23 doing so. This is not an easy requirement to meet." *Trevizo*, 871 F.3d at 678 (quoting

1 *Garrison*, 759 F.3d at 1014-15). In evaluating the ALJ’s determination at this step, the Court
2 may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir.
3 1989). As long as the ALJ’s decision is supported by substantial evidence, it should stand, even
4 if some of the ALJ’s reasons for discrediting a claimant’s testimony fail. *See Tonapetyan v.*
5 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

6 The ALJ found evidence of malingering here. AR at 545. In particular, ALJ Boyce
7 noted that Plaintiff’s responses to a psychological test administered by Dr. Pilarc “suggested a
8 tendency to magnify [Plaintiff’s] illness, and an inclination to complain.” *Id.* Affirmative
9 evidence of malingering—standing alone—can support an ALJ’s rejection of the plaintiff’s
10 testimony. *See Schow v. Astrue*, 272 F. App’x 647, 651 (9th Cir. 2008) (The existence of
11 “affirmative evidence suggesting malingering vitiates the clear and convincing standard of
12 review”) (internal quotation marks omitted). The ALJ continued on in her analysis, giving six
13 other reasons for rejecting Plaintiff’s symptom testimony. AR at 538-45. As discussed below,
14 several of those reasons are valid, so the Court need not decide whether the ALJ could reject
15 Plaintiff’s testimony based solely on her alleged symptom magnification.

16 In addition to evidence of malingering, ALJ Boyce found that Plaintiff’s testimony
17 concerning the intensity, persistence, and limiting effects of her mental impairments was “not
18 entirely consistent with the medical evidence and other evidence in the record.” *Id.* at 537. The
19 ALJ gave six reasons for this determination. First, Plaintiff’s complaints were “out of proportion
20 to the benign longitudinal mental findings” prior to Plaintiff’s return to work. *Id.* at 540-41.
21 Second, Plaintiff’s testimony was inconsistent with her performance on psychological testing.
22 *Id.* at 541-42. Third, the record indicated that Plaintiff’s alleged mental impairments were, “at
23 least in part, situational in nature, rather than due solely to her medically determinable

1 impairments.” *Id.* at 542-43. Fourth, Plaintiff’s testimony was contradicted by her daily
2 activities. *Id.* at 543. Fifth, Plaintiff’s testimony was contradicted by her work activity during
3 the alleged disability period. *Id.* at 543-44. Sixth, Plaintiff’s testimony was contradicted by the
4 fact that she had returned to work despite no significant improvement in her condition. *Id.* at
5 544-45.

6 **1. Inconsistency with Longitudinal Mental Findings**

7 Plaintiff has failed to show that the ALJ harmfully erred in rejecting her testimony due to
8 its inconsistency with the overall medical record, which showed benign mental status findings.
9 *See Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Shinseki v. Sanders*, 556 U.S.
10 396, 409 (2009)). “Contradiction with the medical record is a sufficient basis for rejecting the
11 claimant’s subjective testimony.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161
12 (9th Cir. 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir.1995)). ALJ Boyce
13 provided a thorough discussion of the medical evidence and explained how she drew her
14 conclusions from that evidence. *See* AR at 540-41. Plaintiff has not shown that ALJ Boyce’s
15 interpretation of the evidence was irrational, and thus has not shown that ALJ Boyce erred in
16 rejecting Plaintiff’s symptom testimony on this basis. *See Thomas*, 278 F.3d at 954.

17 **2. Performance on Psychological Testing**

18 ALJ Boyce erred in rejecting Plaintiff’s symptom testimony as inconsistent with her
19 performance on psychological testing. The ALJ’s reasoning here involves too much
20 interpretation of medical data, which is a task that must be left to the doctors. For example, ALJ
21 Boyce attempted to draw conclusions from Plaintiff’s responses to questions during Dr.
22 McConnachie’s mental status exam. *See* AR at 333, 541. But Dr. McConnachie, not ALJ
23 Boyce, was the person qualified to interpret those responses. *See Moghadam v. Colvin*, No. C15-

1 2009-TSZ-JPD, 2016 WL 7664487, at *6 (W.D. Wash. Dec. 21, 2016). “[J]udges, including
2 administrative law judges of the Social Security Administration, must be careful not to succumb
3 to the temptation to play doctor. . . . The medical expertise of the Social Security Administration
4 is reflected in regulations; it is not the birthright of the lawyers who apply them.” *Schmidt v.*
5 *Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) (internal citations omitted). ALJ Boyce thus erred in
6 rejecting Plaintiff’s symptom testimony based on her performance on psychological testing.

7 **3. Situational Stressors**

8 ALJ Boyce did not err in rejecting Plaintiff’s symptom testimony on the basis that the
9 severity of her symptoms was largely due to situational stressors. ALJ Boyce cited to ample
10 evidence in the record indicating that Plaintiff’s symptoms were situational in nature. *See* AR at
11 344, 349, 351-52, 442, 525, 542-43, 845, 849, 853, 857, 871, 884, 893. ALJ Boyce ALJ
12 reasonably interpreted this evidence, and thus did not err in rejecting Plaintiff’s testimony
13 because her symptoms were largely situational. *See Thomas*, 278 F.3d at 954; *Brendan J.G. v.*
14 *Comm’r, Soc. Sec. Admin.*, No. 6:17-cv-742-SI, 2019 WL 3090200, at *7 (D. Or. June 20, 2018).

15 **4. Inconsistency with Daily Activities**

16 ALJ Boyce also did not err in rejecting Plaintiff’s symptom testimony for being
17 inconsistent with Plaintiff’s level of activity. An ALJ may discount a claimant’s testimony if her
18 daily activities “contradict [the claimant’s] other testimony.” *See Orn*, 495 F.3d at 639. ALJ
19 Boyce noted that Plaintiff attended college courses and sang at three concerts despite claiming
20 that she could not deal with people. AR at 543. Plaintiff had full custody of her twin teenage
21 daughters, both of whom had behavioral problems, and helped care for her son, who suffers from
22 schizophrenia and borderline personality disorder. *Id.* at 344, 442, 515, 543. ALJ Boyce
23 reasonably determined that these facts were inconsistent with the severity of symptoms Plaintiff

1 alleged, and did not err in rejecting Plaintiff's testimony on this basis. *See Rollins v. Massanari*,
2 261 F.3d 853, 857 (9th Cir. 2001) (upholding ALJ's rejection of plaintiff's symptom testimony
3 where it was contradicted by her daily activities).

4 **5. Inconsistency with Work Activity During the Alleged Disability Period**

5 ALJ Boyce similarly did not err in rejecting Plaintiff's symptom testimony based on her
6 work activity during the alleged disability period. ALJ Boyce noted, in particular, that Plaintiff
7 showed a poor work ethic and pattern of dishonesty while working part-time at jobs in
8 connection with the Washington Department of Social and Health Services' Division of
9 Vocational Rehabilitation ("DVR"). AR at 543-44, 742-44. An ALJ may look at the claimant's
10 motivation and non-disability-related reasons for not working when evaluating the claimant's
11 testimony. *See Thomas*, 278 F.3d at 959; *Franz v. Colvin*, 91 F. Supp. 1200, 1209 (D. Or. 2015).
12 Plaintiff has not shown that ALJ Boyce's determination was an irrational interpretation of the
13 evidence, and thus the ALJ did not err.

14 **6. Inconsistency with Work Activity After the Alleged Disability Period**

15 ALJ Boyce did err, however, in rejecting Plaintiff's symptom testimony based on her
16 work activity after the alleged disability period. ALJ Boyce reasoned that Plaintiff's medical
17 situation had not changed or improved by the end of the alleged disability period, so the fact that
18 she could work after that point undermined the argument that Plaintiff could not work during the
19 alleged disability period. AR at 544-45. The problem here is that Plaintiff alleged her current
20 employer provides accommodations for her conditions, and the ALJ did not address this issue.
21 *See id.* ALJ Boyce's determination is thus not based on substantial evidence, and she erred in
22 rejecting Plaintiff's testimony on this basis.

23 In sum, ALJ Boyce provided several clear and convincing reasons for rejecting Plaintiff's

1 symptom testimony, along with several erroneous reasons. The ALJ's erroneous reasons do not
2 undermine the validity of ALJ Boyce's acceptable reasons, so her errors were "inconsequential
3 to the ultimate disability determination," *Molina*, 674 F.3d at 1115 (quoting *Carmickle*, 533
4 F.3d at 1162), and therefore harmless.

5 **B. The ALJ Did Not Harmfully Err in Evaluating the Medical Evidence**

6 Plaintiff contends the ALJ erred in weighing the medical opinions of three examining
7 doctors: Dr. Haroian, Dr. Pilarc, and Dr. McConnachie. Pl. Op. Br. (Dkt. 11) at 3-16. To reject
8 the opinions of these examining doctors, ALJ Boyce needed to provide "specific and legitimate
9 reasons that are supported by substantial evidence in the record." *Lester v. Chater*, 81 F.3d 821,
10 830-31 (9th Cir. 1996) (citing *Andrews*, 53 F.3d at 1042). The ALJ could satisfy this
11 requirement "by setting out a detailed and thorough summary of the facts and conflicting clinical
12 evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157 F.3d
13 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

14 **1. The ALJ Did Not Harmfully Err in Rejecting Dr. Haroian's Opinions**

15 Dr. Haroian examined Plaintiff on December 4, 2013. AR at 360-68. He conducted a
16 clinical interview and mental status exam, and administered several psychological tests. *Id.* Dr.
17 Haroian opined that Plaintiff had moderate social and cognitive limitations in a number of areas.
18 *Id.* at 362. Dr. Haroian opined that Plaintiff had marked limitations in her ability to (a)
19 "[m]aintain appropriate behavior in a work setting," and (b) "[c]omplete a normal work day and
20 work week without interruptions from psychologically based symptoms." *Id.*

21 ALJ Boyce gave Dr. Haroian's opinions little weight. *Id.* at 545-46. ALJ Boyce adopted
22 the reasons she had given for discounting Dr. Haroian's opinions in her first decision, noting that
23 Magistrate Judge Strombom had not disturbed those reasons. *Id.* Those reasons were that Dr.

1 Haroian's opinions were not adequately explained, were inconsistent with Plaintiff's
2 performance at Dr. Haroian's examination, and were too heavily based on Plaintiff's self-reports.
3 *See id.* at 19-20. ALJ Boyce added that Dr. Haroian's opinions were inconsistent with the
4 overall medical evidence, Plaintiff's performance on psychological testing, and Plaintiff's
5 activities during the alleged disability period. *Id.* at 546.

6 Plaintiff has failed to show that the ALJ harmfully erred in rejecting Dr. Haroian's
7 opinions. *See Molina*, 674 F.3d at 1111. As discussed above, ALJ Boyce reasonably analyzed
8 the medical evidence and concluded that Plaintiff's overall benign mental status findings were
9 inconsistent with the severity of symptoms she alleged. *See supra* Part II.A.1. That reasoning is
10 equally applicable here, and the ALJ justifiably concluded that Plaintiff's overall treatment
11 record contradicted Dr. Haroian's opinions. *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
12 1190, 1195 (9th Cir. 2004) (holding that a treating physician's opinion may properly be rejected
13 where it is contradicted by other medical evidence in the record).

14 Similarly, the ALJ reasonably concluded that Plaintiff's daily activities and work during
15 the alleged disability period contradicted the severity of symptoms she alleged, and the same
16 analysis applies to Dr. Haroian's opinions. *See supra* Part II.A.4-5. A material inconsistency
17 between a doctor's opinion and a claimant's activities is a specific, legitimate reason for
18 rejecting the doctor's opinion. *See Rollins*, 261 F.3d at 856; *Morgan v. Comm'r of Soc. Sec.*
19 *Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999).

20 These reasons sufficiently support ALJ Boyce's rejection of Dr. Haroian's opinions.
21 Whether ALJ Boyce committed error with respect to the other reasons she gave for rejecting Dr.
22 Haroian's opinions is inconsequential to the outcome. *See Molina*, 674 F.3d at 1115.
23 Accordingly, ALJ Boyce did not harmfully err in rejecting Dr. Haroian's opinions.

1 **2. The ALJ Did Not Harmfully Err in Rejecting Dr. Pilarc's Opinions**

2 Dr. Pilarc examined Plaintiff on August 3, 2012, at the request of DVR. AR at 296-301.
3 Dr. Pilarc conducted a clinical interview and administered several psychological tests. *Id.* Based
4 on her examination, Dr. Pilarc opined that Plaintiff had “essentially average range intellectual
5 abilities, with relative weakness in working memory and visuospatial reasoning.” *Id.* at 301. Dr.
6 Pilarc further opined that Plaintiff may struggle to deal with workplace stressors. *Id.*

7 ALJ Boyce gave Dr. Pilarc's opinions little weight. *Id.* at 546. ALJ Boyce reasoned that
8 Dr. Pilarc's opinions were (a) inconsistent with Plaintiff's stipulation that she was not disabled
9 prior to April 12, 2013, (b) inconsistent with Plaintiff's receipt of unemployment benefits at the
10 time of Dr. Pilarc's examination, (c) inconsistent with Plaintiff's benign mental status findings
11 and performance on testing, and (d) too heavily based on Plaintiff's own self-reports, which the
12 ALJ had already found unreliable. *Id.*

13 Much like ALJ Boyce's analysis of Dr. Haroian's opinions, Plaintiff has failed to show
14 harmful error. *See Molina*, 674 F.3d at 1111. ALJ Boyce reasonably concluded that Plaintiff's
15 overall medical records, which showed benign mental status findings, were inconsistent with the
16 severity of symptoms she alleged. *See supra* Part II.A.1. This reason alone was adequate
17 justification for ALJ Boyce to reject Dr. Pilarc's opinions. *See Batson*, 359 F.3d at 1195. The
18 ALJ's remaining reasons, whether erroneous or not, are ultimately inconsequential to the
19 outcome here. *See Molina*, 674 F.3d at 1115. ALJ Boyce therefore did not harmfully err in
20 rejecting Dr. Pilarc's opinions.

21 **3. The ALJ Did Not Harmfully Err in Rejecting Dr. McConnachie's Opinions**

22 Dr. McConnachie examined Plaintiff on July 25, 2013. AR at 330-35. He reviewed Dr.
23 Pilarc's report and two notes from 2012 and 2013 from another doctor. *Id.* at 331. Dr.

1 McConnellie conducted a clinical interview and mental status exam. *Id.* at 330-34. Dr.
2 McConnellie diagnosed Plaintiff with bipolar disorder. *Id.* at 334. He opined that Plaintiff
3 “appears to be functioning quite effectively between her depressive and manic phases but not
4 during the periods of major depression or mania.” *Id.* at 335. Dr. McConnellie noted that
5 Plaintiff was “very capable” of reasoning, concentrating, and recalling old and new information.
6 *Id.* He opined that Plaintiff had “good social interactional skills.” *Id.* But “this is all when she
7 is reportedly between the extremes of [Plaintiff’s] bipolar mood cycle. Maintaining these
8 abilities during those extremes will be near impossible and lead to job problems.” *Id.*

9 ALJ Boyce gave Dr. McConnellie’s opinions little weight. *Id.* at 546. ALJ Boyce
10 reasoned that (a) Dr. McConnellie did not have the full medical picture because he only
11 reviewed a few records, (b) Dr. McConnellie’s opinions were contradicted by the longitudinal
12 medical record, (c) Dr. McConnellie’s observations and test results did not adequately support
13 his opinions, (d) Dr. McConnellie based his opinions too heavily on Plaintiff’s self-reports, and
14 (e) Dr. McConnellie’s opinions were inconsistent with Plaintiff’s return to work. *Id.* at 546-47.

15 Once again, the ALJ did not harmfully err in rejecting Dr. McConnellie’s opinions. ALJ
16 Boyce reasonably concluded that Dr. McConnellie’s opinions were contradicted by Plaintiff’s
17 overall medical records, just as ALJ Boyce did with Dr. Haroian and Dr. Pilarc’s opinions. *See*
18 *supra* Part II.B.1-2. This was a specific and legitimate reason to reject Dr. McConnellie’s
19 opinions. *See Batson*, 359 F.3d at 1195. The ALJ’s remaining reasons do not affect the
20 legitimacy of this reason, and are thus inconsequential to the outcome here. *See Molina*, 674
21 F.3d at 1115. ALJ Boyce therefore did not harmfully err in rejecting Dr. McConnellie’s
22 opinions.

23 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

DATED this 6th day of June, 2019.

Ronald B. Leighton
United States District Judge